

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 555

BY RESOURCES AND CONSERVATION COMMITTEE

AN ACT

RELATING TO ADMINISTRATIVE PROCEDURES; AMENDING SECTION 67-5243, IDAHO CODE, TO PROVIDE THAT MOTIONS FOR RECONSIDERATION OF CERTAIN RECOMMENDED AND PRELIMINARY ORDERS BE FILED WITHIN FOURTEEN DAYS OF THE SERVICE DATE OF SUCH ORDERS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 67-5245, IDAHO CODE, TO PROVIDE THAT PETITIONS FOR REVIEW OF CERTAIN PRELIMINARY ORDERS BE FILED WITHIN FOURTEEN DAYS AFTER THE SERVICE DATE OF SUCH ORDERS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 67-5246, IDAHO CODE, TO PROVIDE THAT MOTIONS FOR RECONSIDERATION OF CERTAIN FINAL ORDERS BE FILED WITHIN FOURTEEN DAYS OF THE SERVICE DATE OF SUCH ORDERS, TO PROVIDE THAT CERTAIN FINAL ORDERS SHALL BE EFFECTIVE FOURTEEN DAYS AFTER THE SERVICE DATE OF SUCH ORDERS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 67-5248, IDAHO CODE, TO PROVIDE FOR THE SERVICE OF ORDERS AND PROOF OF SERVICE AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 67-5273, IDAHO CODE, TO PROVIDE THAT PETITIONS FOR JUDICIAL REVIEW OF SPECIFIED ORDERS, DECISIONS AND ACTIONS BE FILED WITHIN TWENTY-EIGHT DAYS OF THE SERVICE DATE OF SUCH ORDERS OR DECISIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 67-5243, Idaho Code, be, and the same is hereby amended to read as follows:

67-5243. ORDERS NOT ISSUED BY AGENCY HEAD. (1) If the presiding officer is not the agency head, the presiding officer shall issue either:

(a) ~~a~~A recommended order, which becomes a final order only after review by the agency head in accordance with section 67-5244, Idaho Code; or

(b) ~~a~~A preliminary order, which becomes a final order unless reviewed in accordance with section 67-5245, Idaho Code.

(2) The order shall state whether it is a preliminary order or a recommended order.

(3) Unless otherwise provided by statute or rule, any party may file a motion for reconsideration of a recommended order or a preliminary order within fourteen (14) days of the ~~issuance~~ service date of that order. The presiding officer shall render a written order disposing of the petition. The petition is deemed denied if the presiding officer does not dispose of it within twenty-one (21) days after the filing of the petition.

SECTION 2. That Section 67-5245, Idaho Code, be, and the same is hereby amended to read as follows:

67-5245. REVIEW OF PRELIMINARY ORDERS. (1) A preliminary order shall include:

1 (a) ~~a~~A statement that the order will become a final order without
 2 further notice; and

3 (b) ~~t~~The actions necessary to obtain administrative review of the
 4 preliminary order.

5 (2) The agency head, upon his own motion may, or, upon motion by any
 6 party shall, review a preliminary order, except to the extent that:

7 (a) ~~a~~Another statute precludes or limits agency review of the
 8 preliminary order; or

9 (b) ~~t~~The agency head has delegated his authority to review preliminary
 10 orders to one (1) or more persons.

11 (3) A petition for review of a preliminary order must be filed with the
 12 agency head, or with any person designated for this purpose by rule of the
 13 agency, within fourteen (14) days after the issuance service date of the
 14 preliminary order unless a different time is required by other provision of
 15 law. If the agency head on his own motion decides to review a preliminary
 16 order, the agency head shall give written notice within fourteen (14) days
 17 after the issuance of the preliminary order unless a different time is
 18 required by other provisions of law. The fourteen (14) day period for filing
 19 of notice is tolled by the filing of a petition for reconsideration under
 20 section 67-5243(3), Idaho Code.

21 (4) The basis for review must be stated on the petition. If the agency
 22 head on his own motion gives notice of his intent to review a preliminary
 23 order, the agency head shall identify the issues he intends to review.

24 (5) The agency head shall allow all parties to file exceptions to the
 25 preliminary order, to present briefs on the issues, and may allow all parties
 26 to participate in oral argument.

27 (6) The agency head shall:

28 (a) ~~i~~Issue a final order in writing, within fifty-six (56) days of
 29 the receipt of the final briefs or oral argument, whichever is later,
 30 unless the period is waived or extended with the written consent of all
 31 parties, or for good cause shown;

32 (b) ~~r~~Remand the matter for additional hearings; or

33 (c) ~~h~~Hold additional hearings.

34 (7) The head of the agency or his designee for the review of preliminary
 35 orders shall exercise all of the decision-making power that he would have had
 36 if the agency head had presided over the hearing.

37 SECTION 3. That Section 67-5246, Idaho Code, be, and the same is hereby
 38 amended to read as follows:

39 67-5246. FINAL ORDERS -- EFFECTIVENESS OF FINAL ORDERS. (1) If the
 40 presiding officer is the agency head, the presiding officer shall issue a
 41 final order.

42 (2) If the presiding officer issued a recommended order, the agency
 43 head shall issue a final order following review of that recommended order.

44 (3) If the presiding officer issued a preliminary order, that order
 45 becomes a final order unless it is reviewed as required in section 67-5245,
 46 Idaho Code. If the preliminary order is reviewed, the agency head shall
 47 issue a final order.

48 (4) Unless otherwise provided by statute or rule, any party may file
 49 a motion for reconsideration of any final order issued by the agency head

1 within fourteen (14) days of the ~~issuance~~ service date of that order. The
 2 agency head shall issue a written order disposing of the petition. The
 3 petition is deemed denied if the agency head does not dispose of it within
 4 twenty-one (21) days after the filing of the petition.

5 (5) Unless a different date is stated in a final order, the order is
 6 effective fourteen (14) days after its ~~issuance~~ service date if a party has
 7 not filed a petition for reconsideration. If a party has filed a petition
 8 for reconsideration with the agency head, the final order becomes effective
 9 when:

10 (a) ~~The~~ The petition for reconsideration is disposed of; or

11 (b) ~~The~~ The petition is deemed denied because the agency head did not
 12 dispose of the petition within twenty-one (21) days.

13 (6) A party may not be required to comply with a final order unless the
 14 party has been served with or has actual knowledge of the order. If the order
 15 is mailed to the last known address of a party, the service is deemed to be
 16 sufficient.

17 (7) A nonparty shall not be required to comply with a final order unless
 18 the agency has made the order available for public inspection or the nonparty
 19 has actual knowledge of the order.

20 (8) The provisions of this section do not preclude an agency from taking
 21 immediate action to protect the public interest in accordance with the
 22 provisions of section 67-5247, Idaho Code.

23 SECTION 4. That Section 67-5248, Idaho Code, be, and the same is hereby
 24 amended to read as follows:

25 67-5248. CONTENTS OF ORDERS. (1) An order must be in writing and shall
 26 include:

27 (a) ~~a~~ A reasoned statement in support of the decision. Findings of fact,
 28 if set forth in statutory language, shall be accompanied by a concise
 29 and explicit statement of the underlying facts of record supporting the
 30 findings.

31 (b) ~~a~~ A statement of the available procedures and applicable time limits
 32 for seeking reconsideration or other administrative relief.

33 (2) Findings of fact must be based exclusively on the evidence in the
 34 record of the contested case and on matters officially noticed in that
 35 proceeding.

36 (3) All parties to the contested case shall be ~~provided~~ served with a
 37 copy of the order. The order shall be accompanied by proof of service stating
 38 the service date, each party who was served and the method(s) of service.

39 SECTION 5. That Section 67-5273, Idaho Code, be, and the same is hereby
 40 amended to read as follows:

41 67-5273. TIME FOR FILING PETITION FOR REVIEW. (1) A petition for
 42 judicial review of a temporary or final rule may be filed at any time, except
 43 as limited by section 67-5231, Idaho Code.

44 (2) A petition for judicial review of a final order or a preliminary
 45 order that has become final when it was not reviewed by the agency head
 46 or preliminary, procedural or intermediate agency action under section
 47 67-5271(2), Idaho Code, must be filed within twenty-eight (28) days of the

1 ~~issuance~~ service date of the final order, the date when the preliminary order
2 became final, or the ~~issuance~~ service date of a preliminary, procedural
3 or intermediate agency order, or, if reconsideration is sought, within
4 twenty-eight (28) days after the service date of the decision thereon. A
5 cross-petition for judicial review may be filed within fourteen (14) days
6 after a party is served with a copy of the notice of the petition for judicial
7 review.

8 (3) A petition for judicial review of a final agency action other
9 than a rule or order must be filed within twenty-eight (28) days of the
10 agency action, except as provided by other provision of law. The time for
11 filing a petition for review shall be extended during the pendency of the
12 petitioner's timely attempts to exhaust administrative remedies, if the
13 attempts are clearly not frivolous or repetitious. A cross-petition for
14 judicial review may be filed within fourteen (14) days after a party is
15 served with a copy of the notice of the petition for judicial review.